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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 13, ORIGINAL.—OCTOBER TERM, 1891.

Ex parte

JOHN O. SHAW, JR., Trustee,

Petitioner.

Brief on behalf of Petitioner on motion for a Writ of Mandamus.

MICHAEL H. CARDOZO,

Of Counsel for Petitioner.

PRESS OF CLARENCE S. NATHAN, 202 FULTON ST., N. Y.

IN THE

Supreme Court of the United States.

Ex Parte,

JOHN O. SHAW, JR., *Trustee,*

Petitioner.

Brief on behalf of Petitioner.

STATEMENT OF FACTS.

On or about the 3rd day of September, 1891, a suit was commenced by John O. Shaw, Junior, Trustee, the petitioner herein, against the Quincy Mining Company, Thomas F. Mason, Thomas H. Mason and William Hart Smith, in the Circuit Court of the United States for the Southern District of New York, and said suit is now pending and undetermined.

Annexed to said petition and marked "Exhibit A," is a copy duly certified by the Clerk of said Circuit Court, of all the papers filed in said suit, and used upon the motion hereinafter referred to, (printed papers, pp. 8 to 49).

The subpœna in said suit was duly served upon the defendant, the Quincy Mining Company, by the United States Marshal for the Southern District of New York, at the City of New York, in said district, on the 4th day of September, 1891, and said

subpœna was likewise served upon the individual defendants in said city, as appears from the return of the Marshal, marked "Schedule A" in said "Exhibt A," (pp. 22, 23).

All of said defendants entered a general appearance in said suit on the 5th day of October, 1891, (p. 24).

The petitioner was, at the time of the commencement of said suit, a citizen and resident of the State of Massachusetts, and all of the individual defendants were, at the commencement of said suit, citizens of the State of New York and residents of the City of New York, in the Southern District of New York, (Complaint, p. 40).

The defendant, the Quincy Mining Company, at the time of the commencement of said suit, was a corporation organized under the laws of the State of Michigan, pursuant to an act of the Legislature of said State, approved May 11th, 1877, and Section 30 of said Act expressly provides as follows:

"It shall be lawful for any company associating under this act to provide in the articles of association for having the business office of such company out of this State, and to hold any meetings of the stockholders or Board of Directors of such company at such office so provided for, but every such company having its business office out of this State shall have an office for the transaction of business within this State, to be also designated in such articles of association," (p. 27).

The fifth article of the articles of association of the Quincy Mining Company provides as follows:

"The business office of the company hereby constituted and formed shall be in the City, County and State of New York, and another business office is hereby established at the Quincy Mine in the County of Houghton and State of Michigan," (p. 28).

Beginning in the year 1878, and at all times thereafter and at the time of the commencement of said suit, the Quincy Mining Company had its principal and general office for the transaction of its business in the City of New York, and had no other office ex-

cept at the mines of the company in Michigan, which latter office was used solely for the purpose of carrying on the business attending upon the local workings of the mines of said company, (pp. 19, 20).

The directors of said company are five in number, and they have always had their meetings in the City of New York, and all of the reports made by the President of said Company to the Board of Directors are dated at the City of New York, (pp. 19, 20, 29).

William R. Todd, the Secretary of said Company, has been such since March 6th, 1878, and has always had and had at the time of the commencement of said suit, charge of the general office of said Company, at No. 52 Broadway, in the City of New York, and said Todd has likewise, during all of said years, filled the office of Treasurer of said Company, and the only other officer of said Company at the time of the commencement of said suit was the defendant, Thomas F. Mason, who was the President of said Company, (pp. 19, 20, 29.)

After the commencement of said suit, and after said defendants had all appeared therein, the Quincy Mining Company, moved in said Circuit Court for an order permitting it to withdraw the general appearance which it had entered in said action, and for leave to enter a special appearance therein, and to set aside the service of the subpœna upon it, upon the ground that it was not an inhabitant of the State of New York at the time of the commencement of said suit, within the meaning of the act of Congress of March 3d, 1875, as amended in 1887 and 1888, (pp. 11 to 14).

The motion came on to be heard before Judge Lacombe, and after hearing said motion he made an order allowing said Company to amend its general notice of appearance by making it a special one, and

setting aside the service of the subpœna in said suit upon the said Company upon the ground that it was not an inhabitant or resident of the Southern District of New York at the time of commencement of said suit, (pp. 9, 10).

The petition further alleges that although the Quincy Mining Company was organized under the laws of the State of Michigan, it had become by reason of the facts and circumstances therein set forth an inhabitant and resident of the City of New York, in the Southern District of New York, all of which appeared before the Circuit Court upon the hearing of said motion, (pp. 6, 7).

The petitioner also alleges that by reason of the order made in the Circuit Court, the petitioner is prevented from exercising his right to sue the Quincy Mining Company in the manner he is advised he is entitled to do by the act of Congress of March 3, 1875, as amended in 1887 and 1888, to wit, in the district in which said Company had become an inhabitant and resident at the time of the service of the writ of supbœna, and that he is without any remedy to compel the said Circuit Court to exercise the said jurisdiction, inasmuch as the order setting aside the service of the writ of subpœna is not a judgment from which an appeal lies, and concludes with a prayer that a writ of mandamus may be issued by this Court to compel the Judges of the Circuit Court to take jurisdiction and proceed in said suit, and to strike from the record the order setting aside the service of the writ of subpœna, (p. 7).

On January 11, 1892, a motion was duly made in this court for leave to file said petition, and for a rule upon said Circuit Judges to show cause why a mandamus should not issue, and on January 18, 1892, this Court granted the motion for leave to file said petition, and issued said rule, which was duly served, and a return has been filed, in which it

is stated that the order was made upon the ground that the Quincy Mining Company is a corporation created and existing under the laws of the State of Michigan, and is an inhabitant of the Western District of Michigan, and not an inhabitant of the Southern District of New York.

POINTS.

First.

This Court has power to issue writs of mandamus in all cases "warranted "by the principles and usages of law," to any Courts appointed under the authority of the United States.

U. S. Revised Statutes, §688.

It is elementary that a writ of mandamus is the proper remedy to require an inferior Court to assume jurisdiction of a case which properly belongs to it.

In re Pennsylvania Co., 137 U. S., 451.

Unless the petitioner can obtain a writ of mandamus, he has no other adequate remedy.

The Act of Congress, approved February 25th, 1889 (25 Stats. at Large, page 693), does not impair the right of the petitioner to the writ. It only provides for the review of a final judgment or decree in cases in which there shall have been a question involving the jurisdiction of the Circuit Court.

And it is manifest that under the decision of this Court in McLish *vs.* Roff, 141 U. S., 661, that the order setting aside the service of process upon the Quincy Mining Company is not such an order as could be reviewed here under Section 5 of the Act

of Congress of March 3, 1891 (26 Stat. at Large, p. 826).

Assuredly, Congress did not intend, by these Acts, to take from this Court its power to issue a writ of mandamus to compel an inferior court to exercise the jurisdiction lawfully conferred upon it. There is no express repeal of Section 688 of the Revised Statutes, and no implied repeal is to be inferred.

It is well settled in this Court that repeals by implication are not favored and not allowed, save where repugnancy and inconsistency are plain and unavoidable.

Chew Heong *vs* United States, 112 U. S., 536.

Certainly the creation of a new and inadequate remedy, such as may be claimed is given by the Act of Congress of 1889, has never been known to take away a pre-existing and wholly adequate one.

Assuredly, if, as said by Judge Bradley, in the case of the Pennsylvania Co., above cited, that " it is " unquestionably a general rule that the abrogation " of one remedy does not effect another," the fact that the petitioner, may, possibly, after a decision on the merits against him in the suit referred to in the petition, take an appeal which would possibly bring up the correctness of the order, setting aside the service of the writ of subpœna, cannot be deemed an adequate remedy, and should not, therefore, be held to impair his right to a mandamus.

Well we may urge what was likewise said by this Court in the same case (p. 454). " It is true " that the general supervisory power of this Court " over inferior jurisdictions is of great moment in a " public point of view, and should not, upon light " grounds, be deemed to be taken away in any case."

In this case the suit is in equity and there are several defendants.

The order simply sets aside the service of process upon one of the defendants, a proper and necessary party to the relief sought. New Jersey Central Railroad Co. *vs.* Mills, 113 U. S., 249, 256.

It is apparent that no final judgment can be entered upon the order of the Circuit Court and no appeal can be taken therefrom, and unless the relator can invoke the power of this Court to issue a mandamus it is clear that he is wholly without any adequate legal remedy.

Second.

The Circuit Court of the United States for the Southern District of New York, had jurisdiction of the suit brought by the petitioner against the Quincy Mining Company, and others, referred to in the petition herein.

The Act of Congress of March 3d, 1887 (24 Stats. at Large, 552), as amended by that of August 13th, 1888 (25 Stats. at Large, 433), provides:

"That the Circuit Courts of the United States "shall have original cognizance * * * of all "suits of a civil nature * * * in which there "shall be a controversy between citizens of differ- "ent States."

The same section of the statute in question also provides that:

"No person shall be arrested in one district for "trial in another in any civil action before a Circuit "or District Court; and no civil suit shall be "brought before either of said Courts against any "person by any original process or proceeding in "any other district than that whereof he is an in- "habitant; but where the jurisdiction is founded "only on the fact that the action is between citizens "of different States, suits shall be brought only in "the district of the residence of either the plaintiff "or the defendant."

The corresponding provision of the Act of Congress of March 3d, 1875 (18 Stats. at Large, 470), reads as follows:

"And no civil suit shall be brought before either "of said courts against any person by any original

"process or proceeding in any other district than "that whereof he is an inhabitant, or in which he "shall be found at the time of serving such process "or commencing such proceeding."

The Act of 1875 in this respect was substantially a re-enactment of the Act of 1789.

U. S. R. S., §739..

It will be observed that the words, "or in which "he shall be found at the time of serving such pro- "cess or commencing such proceeding," are wholly omitted from the Act of 1887, as amended in 1888.

Where, therefore, the jurisdiction of the Circuit Court is dependent wholly upon diverse citzenship, as in the case referred to in the petition, the suit must be brought in the district in which the plaintiff or defendant resides.

There can be no question but that the required diverse citizenship between the parties necessary to confer jurisdiction upon the Circuit Court of the United States existed in the suit referred to.

The only question is whether the suit is brought in the proper district, for it must be brought in the district of which the plaintiff or defendant is an inhabitant, or whereof one is a resident.

It is now the settled doctrine of this Court that a corporation created under the laws of a particular State is conclusively presumed to be a citizen of that State, and that no averment or evidence to the contrary is admissible for the purpose of withdrawing the suit from the jurisdiction of a Court of the United States.

Steamship Co. *vs.* Tugman, 106 U. S., 118.

In this case, at p. 120, Mr. Justice Harlan says: "In Ohio & Mississippi Railroad Co. *vs.* Wheeler, "1 Black, 286, the Court, speaking by Mr. Chief- "Justice Taney, said, that in the previous case of "Louisville, Cincinnati & Charleston Railroad Com- "pany *vs.* Letson, 2 How., 497, it had been decided "upon full consideration, 'that where a corporation

"is created by the laws of a State, the legal pre-
"sumption is that its members are citizens of the
"State in which alone the corporate body has a legal
"existence; and that a suit by or against a cor-
"poration, in its corporate name, must be presumed
"to be a suit by or against citizens of the State
"which created the corporate body; and that no
"averment or evidence to the contrary is admissible,
"for the purposes of withdrawing the suit from the
"jurisdiction of a Court of the United States.'
"Marshall *vs.* Baltimore & Ohio Railroad Co., 16
"How., 314; Covington Drawbridge Co. *vs.* Shep-
"herd, 20 Id. 207; Insurance Company, *vs.* Ritchie,
"5 Wall. 541; Paul *vs.* Virginia, 8 Id. 168; Railroad
"Company *vs.* Harris, 12 Id. 65."

The question which therefore arises is whether this corporation, the Quincy Mining Company, organized under the laws of the State of Michigan (and hence a citizen of that State), had become an inhabitant and resident of the Southern District of New York, at the time of the commencement of the suit referred to in the petition within the meaning of the Acts of Congress.

I. The term "citizen" and "inhabitant" or "resident" are not synonomous terms, though the words "inhabitant" and "resident" may well be and are usually so regarded.

The term "citizen" is a general one. A person born or naturalized in the United States, and subject to the jurisdiction thereof, is a citizen of the United States, and of the State wherein he resides.

The terms "resident" and "inhabitant" are limited, and in their application indicate locality. Thus a person is a citizen of the United States, and of the State of New York, but he is an inhabitant or resident of some particular place therein where he dwells.

An allegation of residence is not the equivalent of an allegation of citizenship.

Denny *vs.* Pironi, 141 U. S., 121.

In this case, at page 123, Mr. Justice Brown says: "That an averment of residence is not the equiva-" lent of an averment of citizenship, and is insuffi-" cient to give the Circuit Court jurisdiction, has " been settled in a multitude of cases in this Court, " (Parker *vs.* Overman, 18 How. 137; Robertson *vs.* " Cease, 97 U. S., 646; Everhart *vs.* College, 120 U. " S., 223; Menard *vs.* Goggan, 121 U. S., 253)."

II. This Court has distinctly held that where the word "citizen" is found in Section 5508 of the United States Revised Statutes, it is used in its strict sense, as contrasted with the word "alien," and not as synonymous with the word "resident" or "inhabitant."

See

Baldwin *vs.* Franks, 120 U. S., 678.

"Citizen" and "inhabitant" are not synonymous. One may be a citizen of a State without being an inhabitant, or an inhabitant without being a citizen.

Quimby *vs.* Duncan, 4 Har. (Del.), 383.

III. On the other hand the words "inhabitant" and "resident" are usually so regarded.

In re Wrigley, 8 Wend., 134, 140.
Roosevelt *vs.* Kellogg, 20 Johns, 210.
Barney *vs.* Oelrichs, 138 U. S., 529, 533.
People *vs.* Platt, 50 Hun, 454, 458.
Bouv. Law Dict., tit. "Residents."
Century Dictionary, Vol. V., tit. "Resident."

IV. The English courts recognize the competency of American corporations to acquire a residence in England.

Newby *vs.* Fire Arms Co., L. R., 7 Q. B., 293.
Carron Co. *vs.* MacLaren, 5 H. L. C., 516.
Dicey's Law of Domicil, p. 112.

In Newby *vs.* Fire Arms Company, *ut supra*,

heard before Chief Justice Cockburn, and Blackburn, Meller and Quain, J. J., which was a rule to show cause why an order of a master, setting aside the writ and service thereof, so far as regarded said company, should not be rescinded, it appeared that said company was not an English corporation, but an American company, incorporated under American law; that it had a place of business in England and there carried on business, just as an English corporation might do, but that its principal place of business and head office was in America. The writ was served on the manager of the company in England. It was claimed that the company, being an American corporation, was resident in America, and must be served, if at all, as a foreigner resident out of the jurisdiction.

Mr. Justice Blackburn, delivering the opinion of the Court, at page 295, says:

"Such a corporation does, for many purposes, reside both in England and in its own country. In the case of Carron Iron Company *vs.* MacLaren, 5 H. L. Cas., 459, Lord St. Leonards, taking a different view of the facts from that taken by Lords Brougham and Cranworth, thought the Scotch corporation was resident in England. We think that there is great good sense in what Lord St. Leonards states to be the law on his view of the facts: He says, 'If the service on the agent is right, it is because, in respect of their house of business in England, they have a domicile in England; and, in respect of their manufactory in Scotland, they have a domicile there.' There may be two domiciles and two jurisdictions; and in this case there are, as I conceive, two domiciles and a double sort of jurisdiction, one in Scotland and one in England; and for the purpose of carrying on their business, one is just as much the domicile of the corporation as the other."

Mr. Justice Blackburn also says,

"In the present case, the fact is clear that the American Company are carrying on the trade themselves in London, and, therefore we think,

"must be treated as resident there."

The Court made the rule absolute and rescinded the order of the Master, setting aside the service of the writ, so far as regarded the Fire Arms Company.

In Carron Co. *vs.* McLaren, at p. 449, Lord St. Leonards says: "The first question is, were the appellants within the jurisdiction, so as to authorise "the Court to enjoin their proceedings? They are "incorporated, and they are called a Scotch corporation; their manufactories are in Scotland, but "they have houses of business in England, which "they necessarily carry on by agents or managers; "and they have real as well as considerable personal property in England. The testator was a "shareholder at his death, to the extent of £80,000; "and his representatives are entitled to his shares, "and are, in truth, partners in the concern. I think "that this company may properly be deemed both "Scotch and English. It may, for the purposes of "jurisdiction be deemed to have two domiciles. Its "business is necessarily carried on by agents, and "I do not know why its domicile should be considered to be confined to the place where the "goods are manufactured. The business transacted "in England is very extensive. The places of business may, for the purposes of jurisdiction, properly be deemed the domicile. The corporation cannot have the benefit of its places of business here "without yielding to the persons with whom it "deals a corresponding advantage."

Dicey, *ut supra* says: "It may be maintained, "that a corporation can have two domiciles. In support of this view, are cited cases in which it has "apparently been decided, that a corporation can, "for the purpose of being sued, have a domicile in "each of two countries."

V. This Court has itself recognized that a corporation—a "juridical person" (Grier J., Marshall *vs.* B. & O. R. Co., 16 How., 314, 328)—may have two domiciles and a double sort of jurisdiction.

N. E. Mutual Life Ins. Co. *vs.* Woodworth, 111 U. S., 138.

St. Clair *vs.* Cox, 106 U. S., 350.

Louisville Railroad Company *vs.* Letson, 2 How., 497.

See also, Speer on Removal of Causes, p. 338.

Morawetz on Corporations, Vol. II., p. 817, § 958, Note II, 2nd Ed.

In N. E. Mutual Life Ins. Co. *vs.* Woodworth, *ubi supra*, at page 146, Mr. Justice Blatchford says:

"In the Courts of the United States it is held that "a corporation of one State doing business in an- "other is suable in the Courts of the United States "established in the latter State, if the laws of that "State so provide, and in the manner provided by "those laws. Lafayette Ins. Co. *vs.* French, 18 "How. 404; Railroad Co. *vs.* Harris, 12 Wall. 65; "Ex parte Schollenberger, 96 U. S. 369; Railroad *vs.* "Koontz, 104 U. S. 5, 10."

"In Louisville Railroad Company *vs.* Letson, "Mr. Justice Wayne, at p. 558, says: "Lord Coke, says: 'every corporation and body "politic residing in any county, riding, city "or town corporate, or having lands or tene- "ments in any shire, *qua propriis manibus et "sumptibus possident et habent*, are said to be in "habitants there, within the purview of the "Statute.' In the case of King *vs.* Gardner, in "Cowper 79, a corporation was decided by the Court "of Kings' Bench, to come within the descrip- "tion of occupiers or inhabitants. In the Bank "and Deveaux (5 Cranch 84), the case relied up- "on most for the doctrines contended for by the "plaintiff in error, it is said of a corporation, 'this "ideal existence is considered as an inhabitant "when the general spirit and purpose of the law re- quires it.'"

In St. Clair *vs.* Cox, *ut supra*, (at p. 355,) Mr. Justice Field says:

"This doctrine of the exemption of a corporation "from suit in a State other than that of its creation, "was the cause of much inconvenience and often of "manifest injustice. The great increase in the "number of corporations of late years, and the im-

" mense extent of their business, only made this in-
" convenience and injustice more frequent and
" marked Corporations now enter into all the in-
" dustries of the country. The business of banking
" mining, manufacturing, transportation, and in-
" surance is almost entirely carried on by them, and
" a large portion of the wealth of the country is in
" their hands. Incorporated under the laws of one
" State, they carry on the most extensive opera-
" tions in other States. To meet and obviate
" this inconvenience and injustice, the legislatures
" of several States interposed and provided for
" service of process on officers and agents of foreign
" corporations doing business therein, whilst the
" theoretical and legal view that the domicile of
" a corporation is only in the State where it is
" created, was admitted, it was perceived that when
" a foreign corporation sent its officers and agents
" into other States and opened offices, and carried
" on its business there, it was, in effect, as much re-
" presented by them there as in the State of its
" creation. As it was protected by the laws
" of those States, allowed to carry on its business
" within their borders, and to sue in their courts, it
" seemed only right that it should be held responsi-
" ble in those courts to obligations and liabilities
" there incurred. All that there is in the legal resi-
" dence of a corporation in the State of its creation
" consists in the fact that by its laws the corpora-
" tors are associated together and allowed to exercise
" as a body certain functions, with a right of
" succession in its members. Its officers and agents
" constitute all that is visible of its existence; and
" they may be authorized to act for it without as well
" as within the State. There would seem, therefore,
" to be no sound reason why, to the extent of their
" agency, they should not be equally deemed to
" represent it in the States for which they are
" respectively appointed when it is called to legal
" responsibility for their transactions."

Judge Speer, § 24, says:

" A corporation, while it can only be a citizen and
" have its legal residence in the State which creates
" it, may through its agents become an inhabitant
" of several States, so that it may be sued."

Morawetz, *ubi supra*, says:

"It is sometimes said that a corporation must "'dwell' or 'reside' in the place of its creation, and "that it cannot 'migrate' to another sovereignty. "Bank of Augusta *vs.* Earle, 13 Pet. 588; State *vs.* "Milwaukee, &c., Ry. Co. 45 Wis. 579. This lan- "guage is wholly unmeaning unless it is used in a "figurative sense. A corporation may act through "its agents in foreign States just like a co partner- "ship or a single individual. Strictly speaking, "neither a corporation nor a co-partnership can re- "side or migrate anywhere independently of the in- "dividual shareholders composing it, but the State "under whose laws the company was formed, or "the principal place of business of the company, "may, by a figure of speech, be called its dwelling "place or residence, and may be so regarded within "the meaning of the laws."

VI. The question now under consideration has been the subject of much discussion in the several Circuit Courts, and the learned Judges thereof have differed widely in their views. Considerable embarrassment has thus arisen, and it is proper that the question should now be finally decided by this Court.

The decisions which support the view contended for by petitioner's counsel are the following, viz.:

United States *vs.* Southern Pacific R. Co., *et al.*, recently decided by Mr. Justice Harlan in the Circuit Court for the Northern District of California, not yet reported.

Miller *vs.* Mining Co., 45 Fed. Rep., 345.

Purcell *vs.* British Land & M. Co., 42 Fed. Rep., 465.

Scott *vs.* Texas Land & C. Co., 41 Fed. Rep., 225.

Consolidated S. S. Co. *vs.* Lamson C. S. Co., 41 Fed. Rep., 833.

Riddle *vs.* N. Y., L. E. & W. R. R. Co., 39

Fed. Rep., 290.

Hirschl *vs.* J. I. Case T. M. Co., 42 Fed. Rep., 803, Miller, J.

Zambrino *vs.* Galveston, 38 Fed. Rep., 449.

The opinion of Mr. Justice Harlan so satisfactorily considers the question now before the Court for decision, and as it has not yet been reported, counsel submits a full copy herewith.

In Zambrino *vs.* Galveston, *ubi supra*, at page 455, Judge Maxey says:

"It is also said by the Supreme Court, speaking "of a corporation: 'This ideal existence is con- "sidered as an inhabitant when the general spirit "and purposes of the law require it.' And the "Court propounds the question: 'If it be so for the "purposes of taxation, why is it not so for the pur- "poses of a suit in the Circuit Court of the United "States, when the plaintiff has proper residence?' "(2 How. 559) The inquiry may be further ex- "tended. Do not the general spirit and purposes "of the law require a foreign corporation to be an "inhabitant of a State when it has agents who "transact its corporate business there, and when, "under the laws of that State, it may be sued there, "and service of process had upon such resident "agents? To deny its inhabitancy under the cir- "cumstances named, would deprive the Circuit "Courts of jurisdiction in an important class of "cases, which it is thought was never intended by "Congress in the enactment of the law of March 3, "1887. For example, an English land, insurance, "mortgage, or cattle company, doing business in "Texas, through the medium of its agents, has the "right to invoke the aid of the Circuit Courts to en- "force its rights of property in a suit against a "citizen of Texas. But if the corporation be, as "urged by the defendant, an inhabitant only of "England, the same Courts would be powerless to "extend relief to the Texas citizen. Such seems not "to be the doctrine of the English Courts nor of the "Supreme Court of the United States. If I under- "stand the decisions, in my judgment, it is going "too far to suppose that the Circuit Courts are "stripped of their jurisdiction in cases of that "character, by the mere omission in the act of 1887, "of the words contained in the act of 1875, 'or in

" which he shall be found at the time of serving " such process or commencing such proceeding.'"

In Miller *vs.* Mining, *ut supra*, at page 347, Deady, *J.*, says :

" Between being thus found in a district and being " an inhabitant thereof there is no substantial dif- " ference. The reason for dropping this clause in " the Act of 1888, I apprehend, was the liability to " hardship or inconvenience, in the case of natural " persons who might be thus sued far from home " and the means of defense, while traveling through " the country on business or pleasure, without the " least element of inhabitancy in the case. But " this can never be the case with a foreign corpora- " tion established in business in the district other " than a place of its organization.

" It is not probable that Congress intended to " give a corporation, the subject of a foreign state, " engaged in business, with a local habitation in " the United States, the option of suing a citizen of " the United States in a national court, and to deny " such citizen having a controversy with or a de- " mand against such foreign subject, engaged in " business in the United States, the corresponding " privilege.

" And yet, if a corporation, the subject of a " foreign state, cannot become an inhabitant of " this district, because it cannot migrate here and " become a citizen of the state, such result will " follow.

" 'An inhabitant of a place is one who ordinarily " is personally present there, not merely in *itinere*, " but as a resident and dweller therein.' Holmes *vs.* " Railway Co., 6 Sawy. 277; 5 Fed. Rep., 523.

" A natural person may be a citizen or subject of " one country and an inhabitant of another. Why " cannot a corporation formed under the laws of " Great Britain become an inhabitant of Oregon?

" Take this case for instance:

" The defendant, the Eastern Oregon Gold Min- " ing Company, is a corporation formed in London " for the express purpose of purchasing, owning, " and working a mine in Oregon. It has no other " property or business, and is here in the person of " its officers and agents engaged in working the " mine.

"The Supreme Court has not passed upon this "question, and until it does I shall follow the dic- "tates of my own judgment, which is that the "defendant is an 'inhabitant' of this district within "the meaning of the judiciary act."

In Riddle *vs.* N. Y., L. E. & W. R. R. Co., *supra*, at page 290, it was held by the Judges of the Circuit Court of the Western District of Pennsylvania, on a motion to set aside the service of a writ of summons, that a corporation organized under the laws of the State of Illinois could become an inhabitant of the State of Pennsylvania.

At page 291 the Court says:

"What good reason, then, is there for exemp- "ting the company from suit in a Federal court "sitting in Pennsylvania? Can it be supposed "that such was the intention of Congress? Under "previous laws a person was suable in any district "in which he might be found. Although he might "have been a mere sojourner in, or was simply pas- "sing through the district, he was liable to be "served therein with process from a federal court. "This was the mischief which Congress intended to "remedy by omitting from the act of 1887 the "words 'or in which he shall be found.' But, "clearly, under the provisions of the act of 1889, if "a citizen of a State, without changing or intend- "ing to change his citizenship, becomes an inhabi- "tant of another State, or, in other words, has his "domicile or fixed residence therein, he is suable "in the latter State by original process from a fed- "eral court. Parker *vs.* Overman, 18 How., 137. "Now, in our judgment it was not the intention of "the act to make any distinction in respect to lia- "bility to suit between natural persons and corpor- "ations. As a corporation is a 'person' within "the meaning of the act, so, also, may it be an in- "habitant."

In Purcell *vs.* British Land and Mortgage Co., *supra*, at page 467, Mr. Justice Foster says:

"It is not improbable that a citizen of one State "or country, whether an individual or a corpora- "tion, may, at the same time, be an inhabitant of

" another State or country, and, as such, subject to " be sued in the federal courts."

VII. The cases in this Court relied upon to sustain the contrary view are the following, namely:

Ex parte Schollenberger, 96 U. S., 369.
Insurance Co. *vs.* Francis, 11 Wall., 210.
Railroad Co. *vs.* Koontz, 104 U. S., 5.

In the Schollenberger case, however, Chief Justice Waite, at page 375, expressly says:

" It is unnecessary to inquire whether these sev- " eral companies were inhabitants of the district. " The requirements of the law for all the purposes " of this case are satisfied, if they were found there " at the time of the commencement of the suits."

The case of the Railroad Company *vs.* Koontz involved only the question whether a corporation doing business in a State other than that in which it was incorporated, by that act, ceased to be a citizen of the former, and so lost its right to remove a case from the State to the United States Court, and this Court held that it did not.

It is true that in the Koontz case Chief Justice Waite says that a corporation cannot migrate nor change its residence without a consent, express or implied, of its State, but by the use of the word "migrate," the same employed by Chief Justice Taney in The Bank against Earle, (13 Pet., 519, 588,) it is clear that the Court meant simply that it was not competent for a corporation to change its status of citizenship, as fixed by the State of its creation.

At page 12, the Chief Justice says:

" A corporation may for the purposes of suit be " said to be born where by law it is created and or- " ganized, and to reside where, by or under the au- " thority of its charter, its principal office is. A " corporation, therefore, created by and organized " under the laws of a particular State, and having " its principal office there, is, under the Constitution " and laws, for the purpose of suing and being sued, " a citizen of that State, possessing all the rights

" and having all the powers its charter confers. It " cannot migrate nor change its residence without " the consent, express or implied, of its State; but " it may transact business wherever its charter al- " lows, unless prohibited by local laws. Such has " been for a long time the settled doctrine of this " Court."

The case of Insurance Company *vs.* Francis is simply an authority to show that a corporation is a citizen of the State that creates it, and that by carrying on business in another State, it does not lose such citizenship and become a citizen of such other State.

VIII. There are numerous cases in the Circuit Courts adverse to the position of petitioner's counsel, and among them that of Booth *vs.* St. Louis A. & T. H. R. R. Co., 40 Fed. Rep., 1, in which Mr. Justice Brewer, upon the authority of certain declarations of this Court in the three cases referred to, in the last sub-division of this point, in the light of such declarations, held:

" That a corporation created under the laws of " another State is a citizen of and resident within " that State."

IX. If it shall be held that a corporation is a resident or inhabitant of only the State which creates it, and the State contains more than one district, how shall it be determined of which district it is such resident or inhabitant? Thus, the State of New York has the Northern, Eastern and Southern districts. A corporation is organized under the general laws of said State, relating to manufacturing corporations. It is a corporation organized under the laws of the State, but not under the laws of any particular place therein, for no such laws exist. How shall it be determined of which district in such State it is an inhabitant or resident? Does not the query suggest the natural, the only logical answer? Ascertain the place in which it has its principal or main office located.

Assuredly so, and this is the test for which the petitioner's counsel contends; and if the locality of the principal office is the test in the one case, why is it not in the other?

Is there any distinction, in reason or principle? The State which creates the corporation, permits its creature to designate a place in another State as its principal office; such corporate entity does so designate its principal office in a particular place in such other State, and the State into which it enters and locates itself, does not expressly, by any statutory prohibition, or impliedly, by the general policy of its laws, forbid it so doing.

How did the learned Judge in the Court below ascertain and return to this Court that the Quincy Mining Co. was an inhabitant of the Western District, and not of the Eastern District of Michigan, save by applying to it the test, as to the district wherein its Michigan office was located.

Third.

In amending the Act of 1875, as was done by the Acts of 1887 and 1888, Congress did not intend the serious consequences, involved in the ruling of the Circuit Court.

The question is one of construction, and the spirit rather than the letter of the Statute should control.

The requisite diverse citizenship exists, and if the petitioner cannot maintain his suit in said Circuit Court, if the facts alleged in his bill of complaint therein are true, a great wrong may go unpunished.

The complainant is a resident and citizen of the State of Massachusetts. The individual defendants

are all citizens and residents of the State of New York. The corporation defendant is organized under the Laws of the State of Michigan.

It is apparent, therefore, that no jurisdiction over the individual defendants could be had in the Circuit Court of the United States, for the District of Michigan, in which the corporation defendant has its Michigan office.

It is also apparent that the complainant could not bring his suit in the United States Circuit Court for Massachusetts.

It therefore follows conclusively, that unless the complainant can maintain his suit in the Circuit, he cannot do so in any of the United States Courts.

Again, it is said that the complainant could maintain his suit in the State Courts, either of Michigan or of New York.

Of course, he cannot get jurisdiction over the individual defendants in Michigan, and without jurisdiction over such defendants, and ability to serve them personally with process, no judgment that he might obtain would be of any value.

As to jurisdiction in the State Courts of New York, the complainant being a non-resident, and the defendant being a foreign corporation, it is, at least, doubtful whether under Section 1780, of the Code of Civil Procedure, jurisdiction exists in such State Courts, to give to the complainant the relief which he seeks in this suit.

The Statute of the State under which this Corporation was created expressly contemplated that a corporation existing thereunder might have its *habitat* in another State, for it in terms provided, that it might designate its "place of business" in another State.

The individuals who organized this artificial entity availed themselves of the permission conferred by this Statute, and, in their articles of association, pro-

vided that the place of business, the real home of the corporation, should be in the City, County and State of New York.

That State permits all foreign corporations to do business therein, and requires only from a limited class designations as to persons for service, and provides generally for service of process on all.

Demarest *vs.* Flack, 128 N. Y., 205.

In this case, decided by the Court of Appeals of New York, in October, 1891, it is held that no public policy of the State of New York forbids the transaction of business in that State by a corporation formed in another for the purpose of transacting business there, or requires the exclusion from recognition by the Courts of that State of such a corporation, and that the absence of terms imposed by the legislature thereof, as a condition of such a corporation doing business in the State of New York, furnishes no ground whatever for refusing to recognize it.

In an exact, strict sense, a corporation can, it may well be conceded, be neither a citizen, an inhabitant or a resident, or found in any other place than in the State wherein it was created.

To hold that it may be either is necessarily a fiction or presumption legally indulged or permitted.

As applied to a person of course there is a manifest distinction.

Prior to the decision of this Court in Ex parte Schollenberger (96 U. S., 369) many of the Circuits had held that a corporation could not be found in any other District than one in a State under the laws of which the corporation was created.

Prior to the decision of this Court in Louisville & Nashville R. R. Co. *vs.* Letson (2 How., 497), it had been held that a corporation could not be deemed even a citizen of a State by which it was created.

But the growth of business of corporations required that the Statutes enacted by Congress should be so construed by this Court as to permit a corporation to be deemed in law a citizen of a State in the one case, and to be found in a State other than that of its creation in the other.

If it can be properly held, as it has been, that a corporation can be found in a State other than that of its creation what hardship is there in holding that under like circumstances a corporation is to be deemed, in law, a resident or inhabitant of such State.

How can a corporation be found in a State unless it has, in law, become an inhabitant or resident thereof.

Fourth.

The Quincy Mining Company, at the time of the commencement of the suit referred to in the petition was an inhabitant and a resident of the City of New York, in the Southern District of New York.

The defendant, the Quincy Mining Company, is a corporation organized under the laws of the State of Michigan, pursuant to an act of the Legislature of said State, approved May 11, 1877, and Section 30 of said act expressly provided that it should be lawful for any company organized thereunder to provide in its articles of association for having "the business office" of said company out of the State and to hold the meetings of its stockholders and directors at said office.

The fifth article of the certificate of incorporation of said company provided that "the business office" of the company formed thereunder should be in the

City, County and State of New York, while another business office was to be established at the mine in the County of Houghton in the State of Michigan.

There was, therefore, express legislative authority by the State which created the corporation for its having its business office in the City, County and State of New York.

If ever a corporation can become an inhabitant or resident of a State other than that in which it is organized, certainly this Quincy Mining Company has become a resident and inhabitant of said City, County and State.

1. It derives its powers, express and implied from the laws of the State under which it is organized, and the State which created it made express provision for its becoming such inhabitant and resident.

2. When the corporation was created its articles of association made express provision for its having its principal business office in the City of New York.

3. Its principal office was at the time of the commencement of said suit and for upwards of ten years past had been in the City of New York.

4. All the meetings of its stockholders are held in the City of New York.

5. All the meetings of its directors are held in said city.

6. It has three executive officers, a President, and a Secretary and Treasurer, and they are all citizens of the State and residents in the City of New York.

7. All of its business is transacted in the City of New York, save alone that immediately connected with the mining operations, for which purpose it has a local mining office at the mine at Houghton, Michigan.

The statute under which the Quincy Mining Company was organized, expressly permits a corpora-

tion so organized to have "the business office" in another State, requiring only, as a condition therefor that it shall also have "an office for the transaction of business," within the State of its creation.

The Quincy Mining Company availed itself of this statutory permission and declared, in its Articles of Association, that the "business office" should be in City, County and State of New York, with another, a local office, at its mine in Michigan.

These facts utterly destroy the suggestion that the principal office of the Quincy Mining Company is where the industrial operations, to wit: the mining of copper are carried on. The business of the Company is carried on in the City of New York, where its main offices are, and always have been situated, where the meetings of its stockholders and of its directors are held and where its officers all reside.

Assuredly, the business done in New York, in view of the provisions of the statute under which this Company was created, the explicit declaration contained in its Articles of Association, and the facts above stated, is not subsidiary but superior to that which is done in Michigan.

No suggestion to the contrary could well emanate except from those who would have this Court reverse a long line of its decisions, by which it has been held that corporations are conclusively presumed to be citizens of the States in which they are created, and have it resort to a determination of such citizenship by ascertaining the residence of its members, as one of the Counsel for the respondent does in his late address before the American Bar Association 14, Amer. Bar Asso. Reports, 217).

This contention is absurd, and it is surprising that Counsel so eminent as are those for the Mining Company should attempt to make such a suggestion before this Court when no occasion or necessity ex-

ists therefor in the case at bar.

Fifth.

The Quincy Mining Company was served with process in accordance with the laws of the State of New York.

This Court will take judicial notice of the provisions of the Code of Civil Procedure of the State of New York.

Gormley *vs.* Bunyan, 138 U. S., 623.

In this case, at page 635, Mr. Justice Lamar says:

"The courts of the United States take judicial "notice of all the public statutes of the several "States."

The return of the Marshal shows that the service of the writ of subpœna in the suit referred to in the petiton was made in strict accordance with Section 432 of the Court of Civil Procedure. That section which relates to the personal service of process upon a foreign corporation expressly provides as follows:

"Personal service of the summons upon a defen-"dant being a foreign corporation must be made by "delivering a copy thereof within the State as fol-"lows:

"1. To the President, Treasurer or Secretary, or "if the corporation lacks either of those officers, to "the officer performing corresponding functions "under another name."

The Quincy Mining Company carried on its business in the City of New York. Impliedly, therefore, it submitted itself to the jurisdiction of, not alone its Courts, but the Federal Courts which are located therein. Consent to be sued in a particular locality may exist, expressly, as in the case of a particular agreement (*Ex parte* Schollenberger, 96 U.

S., 369), or, impliedly, by carrying on all its business and doing all the acts in such State which it could do if it were a creature created by it.

This is an inevitable inference from the rulings of this Court in the cases above cited, and in that of Railroad Co. *vs.* Harris, 12 Wall., 65, in which case at page 84, this Court said:

"We entertain no doubt that it made the company "liable to suit, where this suit was brought (the "State granting the right to extend the road) in "all respects as if it had been an independent cor- "poration of the same locality."

Sixth.

The motion for a writ of mandamus should be granted as prayed for in the petition herein.

MICHAEL H. CARDOZO,
Of Counsel for Petitioner.

Office Supreme Court U. S.
FILED.
MAR 7 1892
JAMES H. McKENNEY.
CLERK.

Circuit Court of the United States.

NORTHERN DISTRICT OF CALIFORNIA

THE UNITED STATES

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, ATLANTIC & PACIFIC RAILROAD COMPANY, AND WESTERN UNION TELEGRAPH COMPANY.

In Equity, No 11,181.

HARLAN, *Circuit Justice:* This case is under submission on pleas and motions to dismiss, which contest the jurisdiction of this Court to proceed *in personam* against such of the defendants, not corporations of California, as are not before the Court otherwise than by service of process upon their agents in this district. On this question there is such conflict in the decisions of the Circuit Courts that it is proper to examine it as if now, for the first time, presented. It depends upon the interpretation that may be given to the act of March 3d, 1887, defining the jurisdiction of the Circuit Courts of the United States. 24 Stat. 552, c. 373; 25 Stat. 433, c. 866. Before looking at the provisions of that act it will be well to inquire as to the nature of this suit.

By the act of Congress of August 7th, 1888, known as the Telegraph Act, it is provided that all railroad and telegraph companies to which the United States has granted any subsidy in lands, bonds, or loan of credit, for the construction of either railroad or tele-

graph lines, and which are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating such railroad or telegraph lines, "shall forthwith and henceforward, by "and through their own respective corporate offi- "cers and employees, maintain and operate for rail- "road, governmental, commercial, and all other "purposes, telegraph lines, and exercise by them- "selves alone all the telegraph franchises conferred "upon them and obligations assumed by them under "the acts making the grants as aforesaid." 25 Stat. 382, c. 772, § 1; 12 Stat. 489, c. 120; 13 Stat. 356, c. 216.

This suit was brought pursuant to that act, its fourth section declaring:

"That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act, and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroad and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company or corporation."

The Southern Pacific Railroad Company is a corporation organized under the laws of California, entitled, it is alleged, in respect to its railroad, to all

the rights and privileges granted, and subject to all the conditions prescribed by the acts of Congress relating to the the Atlantic and Pacific Railroad Company, and to be treated as if its railroad and telegraph line had been constructed as a part of the main line of that company.

The Southern Pacific Company is a corporation of Kentucky, but it has no property or business in that State, nor any officer or agent there, except an assistant clerk, holding a subordinate position, and maintained for the purpose of preserving the charter of the company under the laws of that Commonwealth. The company has a large amount of property in California, and is operating lines of railroad in this district. Its general offices are, and for many years have been, in San Francisco, where its principal executive officers reside. The bill alleges that the Southern Pacific Railroad Company claims to have transferred to this company all its property, real, personal and mixed.

The Atlantic and Pacific Railroad Company is a corporation organized under an act of Congress approved July 27th, 1866, with authority to construct a line of railroad and telegraph, and to carry on its business in this State and elsewhere. 14 Stat. 292. Its general officers reside here, and at the commencement of this suit it was operating its railroad and maintaining offices in California.

The Western Union Telegraph Company is a New York corporation, owning a large amount of property and engaged in operating lines of telegraph in this district, where it maintains general offices for the transaction of business. The bill alleges that it has an agreement with the Southern Pacific Railroad Company, under which the latter corporation has ceased to maintain and operate a telegraph line for public or commercial purposes, and under which the former company has acquired a monopoly of all such business on the lines of railroad in question.

The relief sought is a decree annulling not only the lease, if such there be, by which the Southern Pacific Railroad Company assigned all its property to the Southern Pacific Company, but certain contracts of lease and sale by the former to the Atlantic and Pacific Railroad Company, as well as the above contract between the Southern Pacific Railroad Company and the Western Union Telegraph Company; and requiring the Southern Pacific Railroad Company, henceforth and through its own officers and employees, to maintain and operate telegraph lines along its entire main road and branches for railroad, governmental, commercial and all other purposes, itself exercising all the telegraph franchises conferred upon it, and performing all the obligations assumed by it under the grants from Congress.

The *supœna* in this case was served on the secretaries, respectively, of the Southern Pacific Railroad Company and the Southern Pacfic Company, on the general passenger and freight agent of the Atlantic and Pacific Railroad Company, and on the general superintendent of the Wes'ern Union Telegraph Company for the Pacific Coast.

The officers and agents on whom service was made were at the time located in San Francisco.

Among the suits of a civil nature, at common law or in equity, of which the Circuit Courts of the United States have original jurisdiction, under the act of March 3rd, 1887, amending that of March 3rd, 1875, are those involving the sum or value of more than two thousand dollars, exclusive of interests and costs, and arising under the Constitution or laws of the United States, or treaties made under their authority; those in which the United States are plaintiffs or petitioners; those involving the above sum in which there is a controversy between citizens of a state and foreign states, citizens and subjects, or a controversy between citizens of different States,

The same act provides: "But no person shall be "arrested in one district for trial in another in any "civil action beforea Circuit Court or District Court; "and no civil suit shall be brought before either of "said courts against any person by any original pro- "cess or proceeding in any other district than that "whereof he is an inhabitant, but where the jurisdic- "tion is founded only on the fact that the action "is between citizens of different States, suit shall be "brought only in the district of the residence of either "the plaintiff or the defendant; * * *" 25 Stat. "434, c. 866; 24 Stat. 552, c. 373.

The provision in the original act of 1875, in respect to the district in which suits must be brought was as follows: "No person shall be arrested in one "district for trial in another in any civil action before "a Circuit or District Court. And no civil suit shall "be brought before eitherof said courts against any "person by any original process or proceeding in any "other district than that whereof he is an inhabitant, "or in which he shall be found at the time of serving "such process, or commencing such proceeding." 18 Stat., p. 470, c. 137. The Judiciary Act of 1789 contained, substantially, the same provision. 1 Stat., p. 79, c. 20.

It thus appears that the provision in the act of 1875 permitting suit—the plaintiff and the defendant being citizens of different States—to be brought in the district where the defendant was "found" was stricken out by the act of 1887; and that the right to bring a civil suit, by original process, in the district of which the defendant is an "inhabitant," is now subject to the condition that where jurisdiction is acquired only by reason of diverse citizenship, the suit must be brought in the district of the residence of either the plaintiff or the defendant.

The first point made by the defendants is that the Circuit Courts of the United States possess no powers except such as the Constitution and the acts of Congress concur in conferring upon them, and that the legal presumption is that every cause is without their jurisdiction until and unless the contrary affir-

matively appears. No doubt can exist as to the correctness of this principle. Sheldon *vs.* Sill, 8 How., 441, 449. National Steamship Co. *vs.* Tugman, 106 U. S., 118. Bors *vs.* Preston, 111 U. S., 252. Railway Co. *vs.* Swan, 111 U. S., 379, 383.

The pleas and motions to dismiss proceed upon the ground that a corporation is an "inhabitant" only of the State which created it, and, although doing business in another State, under its license or with its consent, is not, since the passage of the act of 1887, subject to the jurisdiction and power of a Circuit Court of the United States, held in the latter State, except in suits in which jurisdiction is founded wholly on diverse citizenship, and in which the corporation is sued, as a citizen of the State of its creation, by a citizen of the State in which the Court sits.

The act of 1887, thus construed, would work results not to have been expected from the action of the legislative branch of the Government. 1. If, within the meaning of that act, a corporation is an "inhabitant" only of the State creating it, a corporation of a foreign country must be deemed an "inhabitant" only of that country. And as the words in the act of 1887, "where the jurisdiction is "founded only on the fact that the action is between "citizens of different States, suit shall be brought "only in the district of the residence of either the "plaintiff or defendant," refer only to suits in judicial districts established by Congress, and, therefore, only to suits between citizens of different States of the Union, it would follow, from the defendants' construction, that a Circuit Court of the United States could never acquire jurisdiction over an European corporation doing business in this country; for the act of 1887 expressly prohibits the bringing of any suit in the Circuit or District Court "against "any person, by any original process or proceeding, "in any other district than that whereof he is an "inhabitant."

2. If all the defendants in this suit are indispensable parties to the relief sought by the bill—and they seem to be—the government could not proceed against them in any Circuit Court of the United States without encountering the objection now urged against the jurisdiction of this Court; and it would be compelled, in order to enforce the provisions of the Telegraph Act, to invoke the jurisdiction of a State Court, without the privilege of removing the suit, after it was brought, into the Circuit Court, the right of removal being given by the act of 1887 only to defendants. 3. A citizen of California can bring suit in this Court against a corporation of another State, which does business here by agents located in this State and district, if jurisdiction be founded only on the diverse citizenship of the parties; but, according to the defendants' interpretation of the act of Congress, this Court cannot entertain jurisdiction of a suit brought by the United States, under the authority of an act of Congress, against the same corporation, upon a like cause of action. While it is competent for Congress to declare what part of the judicial power of the United States, as defined by the Constitution, may be exercised by the Courts which it establishes, we should not lightly presume that it was intended to produce the results which, confessedly, follow from the construction placed upon the act of 1887 by the learned counsel for the defendants.

The Court is of the opinion that the clause in the first section of the act of 1887, requiring suits to be brought in the district of the residence either of the plaintiff or of the defendant where jurisdiction is founded only on diversity of citizenship, applies only to suits in which the parties, whether natural or artificial persons, are "citizens of different States," and cannot apply to suits brought by the United States. The general government is present everywhere within the territorial limits of the United

States, and, under the existing statutes, may invoke the jurisdiction of any Circuit Court of the United States, in respect to any cause of action it may have against a natural or artificial person, subject only to the condition that its suit must be brought in the district of which the defendant is an "inhabitant." The question, therefore, to be determined is, whether a corporation created by the laws of another State, but doing business here, and having its agents located within the territorial jurisdiction of this Court, may not, within the meaning of the statute be deemed an "inhabitant" of this State and district.

Numerous cases have been cited by the counsel of defendants as showing that a corporation of one State is an inhabitant only of the State creating it. Upon a careful examination of those cases the Court is of opinion that no one of them determines the precise question now before it. The cases cited in argument establish these principles.

1. While a corporation is domiciled in the State by whose laws it was created, its legal existence in that State may be recognized elsewhere, so that, within the scope of its limited powers, it may make and enforce contracts in other States which are not forbidden by the laws of such States. Bank of Augusta *vs.* Earle, 13 Pet. 519, 588, 589; Christian Union *vs.* Yount, 101 U. S. 352, 356. In the latter case, it was said that "in harmony with the general law of "comity obtaining among the States composing the "Union, the presumption should be indulged that a "corporation of one State, not forbidden by the law "of its being, may exercise within any other State the "general powers conferred by its own charter, unless "it is prohibited from so doing, either in the direct "enactments of the latter State, or by its public "policy to be deduced from the general course of "legislation, or from the settled adjudication of its "highest court."

2. For the purposes of jurisdiction in the Courts of the United States, a corporation is to be deemed

a citizen of the State creating it, and no averment to the contrary is permitted. Louisville Railroad Co. *vs.* Letson, 2 How. 497; Marshall *vs.* B. & O. R. R. Co., 16 How. 314; Lafayette Ins. Co *vs.* French, 18 How. 404, 408; Covington Drawbridge Co. *vs.* Shepherd 20 How. 227; Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286, 297; Paul *vs.* Virginia, 8 Wall. 168; Railroad Co. *vs.* Harris, 12 Wall. 65; Railroad Co. *vs.* Kountz, 104 U. S. 5, 12; Goodlett *vs.* Louisville & Nashville R. R. Co., 122 U. S. 391.

3. A corporation of one State, by engaging in business or acquiring property in another State, does not thereby cease to be a *citizen* of the State creating it. Insurance Co. *vs.* Francis, 11 Wall. 210; although, while the act of 1875 was in force, it could be "found" in any State where it did business regularly, by its agents, process being served upon such agents. *Ex parte* Schollenberger, 96 U. S. 369. In the latter case the Court was careful to say that it was unnecessary to inquire whether such a corporation was not, also, within the meaning of the act of 1875, *an inhabitant of* the State in which it did business.

In some of the cases cited there are general expressions upon which much stress is laid by counsel. In Bank of Augusta *vs.* Earle, it was said that a corporation must "dwell" in the State of its creation, and cannot "migrate" to another sovereignity; in Louisville Railroad Co. *vs.* Letson, that it is an "inhabitant" of the State which brought it into existence; in Marshall *vs.* B. & O. Railroad Company, that "its necessary habitat" is there; in *ex parte* Schollenberger, that a corporation has its "legal home" at the place where it is located by or under its charter; and, in Railroad *vs.* Kountz, that a corporation, by doing business away from its "legal residence" does not change its citizenship. A case much relied upon is Insurance Co. *vs.* Francis. That was a suit brought in a Court of

Mississippi, by a citizen of Illinois against a New York corporation doing business, by agents, in the State of Mississippi. The plaintiff sought to remove the case into the Circuit Court of the United States under the act of 1867, giving jurisdiction where the controversy was "between a *citizen* of the State *in which the suit is brought*, and a *citizen* of another State." It was held that the defendant, being a corporation of New York, was a citizen of that State, and, consequently, the suit could not be removed. "Its place of residence," the Court said, "is there, and can be nowhere else. "Unlike a natural person, it cannot change its "domicil at will, and, although it may be per- "mitted to transact business where its charter does "not operate, it cannot on that account acquire a "residence there."

Those cases undoubtedly hold that a corporation cannot throw off its allegiance or responsibility to the State which gave it existence, and that its primary, legal domicil or habitation, that is, its *citizenship*, is in such State; consequently, for the purpose of suing and being sued in the Courts of the United States, it is to be deemed a citizen of the State by whose laws it was made an artificial person. But neither those cases, nor any case in the Supreme Court of the United States, directly decides that a corporation may not, in addition to its primary, legal habitation or home in the State of its creation, acquire a habitation in, or become an inhabitant of another State, for purposes of business, and of jurisdiction *in personam*.

It is eminently just that the defendants, not corporations of this State, should be regarded as inhabitants of this district for purposes of jurisdiction. Each of them is under a duty imposed by the Constitution of this State to have and maintain an office or place here for the transaction of its business. By the same instrument it is provided that no foreign corporation shall be allowed to transact

business here on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State; also, that a corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises or the breach occurs, or in the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases. Const. Cal. 1879, Act 12, secs. 14, 15, 16. The Code of Civil Procedure provides that in a suit against a corporation formed under the laws of this State the summons must be served on the president, or other head of the corporation, secretary, cashier or managing agent thereof; and in a suit against a foreign corporation, doing business and having a managing or business agent, cashier or secretary within this State, on such agent, cashier or secretary. Sec. 411. And by an act approved April 3d, 1880, it was provided that every railway corporation, and every corporation organized for the purpose of carrying freight or passengers, which has or may be created or organized under or by virtue of the laws of any State or Territory of the United States, or of any act of Congress, may build railways, exercise the right of eminent domain, and do or transact any other business which such corporation might, if it had been created or organized under or by virtue of the laws of this State, having the same rights, privileges and immunities, and subject to the same penalties, obligations and burdens as if they had been created or organized under the laws of California. Laws of 1880, p. 21. It is thus seen that corporations of other States do business here under the license of this State, subject to the implied condition that they may be brought, by service of process upon their agents before the Courts of this jurisdiction. And, in respect to railroad corporations, organized under the laws of other States, and doing

business here, they become, for most, if not for all, practical purposes, inhabitants of this State.

If it be said that inhabitancy in a State, in its strict legal sense, implies a permanent, fixed residence in that State, the answer is, that a corporation of one State, operating, by agents, a railroad or telegraph line in another State, with its consent, or under its license, may be regarded as permanently identified with the business and people of the latter State, and, for the purposes of its business there, to have a fixed residence within its limits; for it may, not unreasonably, be assumed that it will exert its powers there during the whole of its corporate existence, or so long as it is profitable to do so. It does there just what it would do if it had received its charter from that State. It seems to the Court that a corporation of a State, or a corporation of the United States, holding such close relations with the business and people of another State, may, within a reasonable interpretation of the Act of 1887, be deemed an "inhabitant" of the latter State for all purposes of jurisdiction *in personam* by the courts held there; although a corporation is, and, while its corporate existence lasts, must remain, a "citizen" only of the State which gave it life.

It is ordered and adjudged that the pleas and motions to dismiss, so far as they question the jurisdiction of this Court to proceed *in personam* against the several defendant corporations, as inhabitants of this district, within the meaning of the above act of Congress, be and the same are hereby overruled.

FILED
FEB 25 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 13, Original, October Term, 1891.

Ex parte: IN THE MATTER OF JOHN O. SHAW, JR., Trustee, *Petitioner,*

On petition for a Writ of Mandamus.

RETURN AND BRIEF

AGAINST THE PETITION AND IN BEHALF OF "THE QUINCY MINING COMPANY," A CORPORATION.

DON M. DICKINSON,
ALFRED RUSSELL,
Counsel for the Corporation.

DETROIT:
JOHN F. EBY & CO., PRINTERS,
1892.

Supreme Court of the United States.

NO. 13, ORIGINAL.

OCTOBER TERM, 1891.

Ex parte: In the matter of JOHN O. SHAW, JR., Trustee, *Petitioner.*	*On petition for a writ of mandamus.*

RETURN.

The undersigned, E. Henry Lacombe, Junior United States Circuit Judge for the Southern Division of New York, acknowledges service upon him of a rule to show cause why a writ of mandamus should not issue, commanding the judges of said court to take jurisdiction and proceed against the Quincy Mining Company in the suit now pending and undetermined in said Circuit Court of the United States for the Southern District of New York, wherein John O. Shaw, trustee, the petitioner herein, is complainant, and the said Quincy Mining Company and others are defendants, upon the ground that said Quincy Mining Company was an inhabitant of the State of New York and a

resident in the Southern District of New York at the time of the commencement of said suit, and why the order made in said suit, on and bearing date the 23d day of December, 1891, whereby the service of the writ of subpœna upon said Quincy Mining Company was set aside, should not be stricken from the record of said suit.

And thereupon this respondent shows cause as follows, to wit:

1. Said petitioner filed a bill in said Circuit Court, in which bill the jurisdictional clause was as follows: "John O. Shaw, Jr., of Boston, in the county of Suffolk and commonwealth of Massachusetts, a citizen of the State of Massachusetts, in his capacity as trustee, under the will of Elizabeth H. Rogers, deceased, late of Boston, in the county of Suffolk and commonwealth of Massachusetts, brings this, his bill of complaint, in behalf of himself and all other stockholders of the Quincy Mining Company who are similarly situated, and who shall be entitled to avail themselves of the benefit of this suit, not joined as respondents, against the Quincy Mining Company, a corporation duly organized under the laws of the State of Michigan, and having a usual place of business in the city, county and State of New York, Thomas F. Mason, of the city, county and State of New York, and Thomas H. Mason and William Hart Smith, both of the city, county and State of New York, individually and as copartners, doing business as brokers under the name of Mason & Smith, all of whom are citizens of the State of New York."

2. Original process founded upon said clause issued, directed to said Quincy Mining Company, and was returned served within the Southern District of New York upon the Quincy Mining Company, by exhibiting to William Rogers

Todd, secretary of said company, the original subpœna and leaving with him a copy.

3. The Quincy Mining Company appeared specially and moved to set aside the aforesaid service of process, and, after argument and deliberation, this respondent granted the motion and ordered the service of process upon the Quincy Mining Company, by service of subpœna, in the Southern District of New York upon William Rogers Todd, secretary, to be set aside.

4. Respondent made the said order upon the ground that said Quincy Mining Company is a corporation created and existing under the laws of the State of Michigan, and is an inhabitant of the Western District of Michigan, and not an inhabitant of the Southern District of New York.

All which is respectfully submitted.

(Signed) E. Henry Lacombe,
Circuit Judge Southern District New York.

Brief Against the Petition, and in Behalf of the Quincy Mining Company, of Michigan.

DON M. DICKINSON,
ALFRED RUSSELL,
Counsel for the Quincy Mining Company.

FACTS.

1. Shaw, a citizen of Massachusetts, filed his bill in the Circuit Court for the Southern District of New York, "*against the Quincy Mining Company, a corporation* "*duly organized under the laws of the State of Mich-* "*igan, and having a usual place of business in the* "*city, county and State of New York*," and against Thomas F. Mason, Thomas H. Mason, and William Hart Smith, citizens of New York.

2. The italicized portion of the last paragraph is extracted from the bill, on page 40 of the record.

a. There is no allegation that the corporation is a citizen of the State of Michigan.

b. And the allegation, which is supposed by the petitioner to be sufficient to subject the corporation to his suit in New York, is a recital (and not a positive allegation), as follows: "*having a usual place of business in the* "*city, county and State of New York.*"

c. The *sole question* in this case is, whether this allegation confers jurisdiction over the Michigan corporation in the United States Court of New York. That is to say, whether the allegation that the Quincy Copper Mining Company, "*has a usual place of business in the city of New*

York," makes that corporation "*an inhabitant*" of the Southern District of New York, so that original process may there be served upon the secretary.

I.

The act of 1887, which omits the words of the previous act, "*or in which he shall be found*, etc.," was an act "*mainly designed to restrict*" the jurisdiction of the Circuit Court, by allowing no process "*against any per-*"*son in any other district than that whereof he is*" *an inhabitant*."

Both acts in parallel columns in 120 U. S., 788, *Appendix*. Mr. J. Miller, *Smith vs. Lyons*, 133 U. S., 315, 319, 320; Mr. C. J. Fuller, *McCormick vs. Walthers*, 134 U. S., 41, and it is the duty of the court to carry out that design. "Our duty is to give effect to the will of the lawmaking power when expressed within the limit of the constitution. With the policy of the act we have nothing to do." *Barney vs. Latham*, 103 U. S., 212. "And judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the constitution and the laws confer."—*Ex parte McCardle*, 7 Wall., 515.

II.

The word "inhabitant" means the same thing in the present statute which it meant in the former statute. This is incontrovertible. And we say, first, that in all cases where process was served upon a corporation outside the State of

its creation, *under the former law*, such service was justified and sustained under that clause of the law which has *now been omitted*, and upon the ground that the corporation was "*found*" where it was served, and was *not* sustained upon the ground that the corporation defendant was an "*inhabitant*" of the State when it was served.

And we say, *second*, that the construction of the word "*inhabitant*" under the former law, for half a century, was, that a corporation, held to be a citizen of a State *was always* an inhabitant of the same State, and could not be a citizen of one State and an inhabitant of another, and, indeed, was held to be a citizen because an inhabitant.

Judge Shiras says in *Myers vs. Murray Co.*, 43 F. R., 699, that the place of the inhabitancy of a corporation is not *an open question*, in view of the decisions of this Court, and we agree with him.

We call attention to the successive declarations on this subject in this Court.

1. *Bank of Augusta vs. Earle*, 13 Peters, 588 (1839).

"It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law, and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence.

It must *dwell* in the place of its creation, and cannot migrate to another sovereignty. But although it must live and have its being in that State only, yet it does not by any means follow that its existence there will not be recognized in other places, and its *residence* in one State creates no insuperable objection to its power of contracting in another.

It is indeed a mere artificial being, invisible and intangible; yet it is a person for certain purposes in contemplation.

of law, and has been recognized as such by the decisions of this Court. Now, natural persons, through the intervention of agents, are continually making contracts in countries in which they do not reside, and where they are not personally present when the contract is made, and nobody has ever doubted the validity of these agreements, and what greater objection can there be to the capacity of an artificial person, by its agents, to make a contract, within scope of its limited powers, in a sovereignty in *which it does not reside*, provided such contracts are permitted to be made by them by the laws of the place."

2. *Louisville R. R. Co. vs. Letson*, 2 How., 355 (1844).

The reason given in this case for holding a corporation to be a *citizen* of the State creating it is, that the corporation is *an inhabitant* of the State.

"A corporation, created by a State, to perform its functions under the authority of that State, and only suable there, though it may have members out of the State, seems to us to be a person, though an artificial one, *inhabiting* and belonging to that State, and *therefore* entitled, for the purpose of suing and being sued, to be deemed a *citizen* of that State."

3. *Paul vs. Virginia*, 8 Wall., 180 (1868).

"Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by this provision to give to the laws of one State any operation in other States. They can have no such operation, except by permission, express or implied, of those States. The special privileges which they confer must, therefore, be enjoyed *at home*, unless the assent of other States to their enjoyment therein be given.

Now, a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation being the mere creation of local law, can have no *legal existence* beyond the limits of the sovereignty where created. As said by this Court, in *Bank of Augusta vs. Earle*, 'It must *dwell* in the place of its creation, and cannot migrate to another sovereignty.'"

4. *Ins. Co. vs. Francis*, 11 Wall., 210.

"A corporation can have no legal existence outside the sovereignty by which it was created. *Its place of residence is there, and can be nowhere else.* Unlike a natural person, it cannot change its *domicile* at will; and, although it may be permitted to transact business where its charter does not operate, it cannot, on that account, *acquire a residence* there."

5. *Tioga R. R. vs. Blossburg R. R.*, 20 Wall., 148 (1873).

"The cases establish that a corporation has its existence and *domicile only within the jurisdiction of its origin*, and that in its nature it is incapable of migration to another jurisdiction."

6. *Pensacola Tel. Co. vs. W. Co.*, 96 U. S., 1 (1877).

"A corporation can have no legal existence beyond the limits of the limits of the sovereignty which created it. In *Bank of Augusta vs. Earle*, it was said by this Court that 'it must *dwell* in the place of its creation, and cannot migrate to another sovereignty'. And in *Paul vs. Vir-*

ginia, we added, that 'the recognition of its existence, even by other States, and the enforcement of its contracts made therein, depend purely on the comity of those States —a comity which is never extended where the existence of the corporation or the exercises of its powers is prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporations entirely; they may restrict its business to particular localities; or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest. The whole matter rests in their discretion.' If, therefore, foreign corporations can exist in the State of Florida, and do business there by the authority of Congress, it must be because Congress can create such corporations for local business—a doctrine to which I cannot assent, and which, to my mind, is pregnant with evil consequences."

7. *Ex parte Schollenberg*, 96 U. S., 377.

"A corporation cannot change its *residence* or its citizenship. It can have its *legal home* only at the place where it is located by or under the authority of its charter."

8. *Railroad Co. vs. Koontz*, 104 U. S., 5.

"By doing business away from their legal residence, they do not change their citizenship, but simply extend the field of their operations. They *reside at home*, but do business abroad."

9. *Canada S. R. R. Co. vs. Gebhard*, 104 U. S., 537 (1883).

"A corporation 'must *dwell* in the place of its creation, and cannot migrate to another sovereignty' (*Bank of Augusta vs. Earle*, 13 Peters, 588), though it *may do business in all places where its charter allows* and the local laws do not forbid (*Railroad vs. Koontz*, 104 U. S., 12). But wherever it goes for business it carries its charter, as that is the law of its existence, and the charter is the same abroad that it is *at home*. Whatever disabilities are placed upon the corporation *at home* it retains abroad, and whatever legislative control it is subject to *at home* must be recognized and submitted to by those who deal with them *elsewhere*."

10. *Penn. R. Co. vs. St. L., A. & T. H. R. Co.*, 118 U. S., 290.

"It does not seem to admit of question that a corporation of one State, owning property and doing business in another State by permission of the latter, does not *thereby become a citizen* of this State also."

These cases, and some others, are decisions concerning the habitancy of a corporation; and we submit they must be controlling against the issue of this writ, as they have been controlling in influencing the decisions of the Circuit Courts, under the act of 1887, in the cases enumerated hereafter (VI below).

III.

1. The object of the existence of the company is the *mining of copper* in the Upper Peninsula of Michigan, in the Federal Western Judicial District of Michigan.

This is its "*business.*" This is the corporate enterprise in prosecuting which the company is engaged. Here is where the *industrial* operations of the company are and must be carried on. This business is not and cannot be carried on or conducted in the city of New York, *in any sense.* (Distinction between the industrial office and the financial office of a corporation, *Hohorst vs. Hamburg American Co.*, 38 F. R., 273.)

2. But New York is the financial center of the country, as this Court will judicially notice; and, as the statute of the State of Michigan permits a mining corporation to have *two* "*business*" offices, one within and one without the State (Statute, Record, p. 4), the corporation had an office for financial business in New York, and an office for the business for which it was formed (copper mining), in Michigan.

It is too plain for argument that the "*business*" of the company was copper mining; and that anything that could be done in New York was *purely subsidiary* to the actual business in Michigan.

IV.

The foregoing statement simplifies the question.

1. It renders it unnecessary to consider that class of cases where a corporation created in one sovereignty has been adopted into another, as in the *Pacific R. R. removal cases*, 115 U. S., 2, and *Memphis R. R. Co. vs. Alabama*, 107 U. S., 581, and some others.

On page 585 of the latter case, Mr. Justice Gray says of the Tennessee corporation, which was adopted by Alabama, it "*has no existence in this State* (*Alabama*), *as a legal* "*entity or person, except under and by force of its* "*incorporation by this State.*"

2. And renders it also unnecessary to consider that class of cases where a foreign corporation is prohibited from doing business in a State until it has designated an agent within that State to receive service of process, thereby waiving its personal exemption. (*Ex parte Schollenberg*, 96 U. S., 375, where the proceeding was by *mandamus*, as here, and where it was expressly said that "*the require-* "*ments of the law, for all the purpose of this case,* "*are satisfied if they* (*the defendant corporation*), "*were found there at the time of the commencement* "*of this suit*" (p. 375).

The Court in that case relied on *R. R. Co. vs. Harris*, 12 Wall., 65, and quoted the language of Judge Swayne in that case. "It (a corporation) cannot migrate, but may "exercise its authority in a foreign territory upon such con- "dition as may be prescribed by the law of the place. *One* "*of these conditions may be that it shall consent to* "*be sued there.*"

In the Schollenberg case Chief Justice Waite proceeded to say: "*A corporation cannot change its* RESIDENCE "*or its citizenship. It can have its* LEGAL HOME *only* "*at the place where it is located, by or under the* "*authority of its charter; but it may, by its agents,* "*transact business anywhere unless prohibited by its* "*charter, or excluded by local laws*" (p. 377, *bottom*, 96 U. S.).

That is to say;

a. A corporation may do business, by its agents (if not shut out), in any jurisdiction.

b. It may *consent* to have process served on it, and so "*may be found*" in any jurisdiction.

c. But it can have but *one* residence, *one* legal home, *one* citizenship; *all* inseparably bound together; citizenship, residence, home.

This Schollenberg case was afterwards said to be supported on the ground that a corporation of one State, doing business in another, "*is suable there if the* (*local*) *laws* "*make provision to that effect.*"

R. R. Co. vs. Kountz, 104 U. S., 10, middle.
N. E. Life Co. vs. Woodworth, 111 U. S., 146, near middle.
Brownell vs. Troy & Boston R. R., 3 Fed. Rep., 761.

In the last case, Judge Wheeler says a corporation of one State can have no legal corporate existence in another, and and that otherwise "*one individuality would be a citizen of two different States at the same time*" (p. 764, top).

3. It is also unnecessary to consider a third class of cases,

where the *local law* makes foreign *commercial* corporations *carrying on business* in the State liable to suits without appointing an agent for service of process. The Quincy Mining Company does not carry on business in New York. Meetings of directors and stockholders are not for carrying on business. The object of the formation of the company was not to have meetings, but to mine copper. Trading corporations, or corporations for exploiting patents, etc., may carry on business in other States; but it is impossible that this mining corporation should conduct its industrial corporate business in the city of New York.

St Clair vs. Cox, 106 U. S., 350.
Drummond, Cir. J., Wilson Packing Co. vs. Hunter, 7 Reporter (Boston), 455.
(New Jersey) Williams vs. Empire Co., 14 O. G., 523.
McCrary, Cir. J., Eaton vs. St. Louis Co., 7 F. R., 139.
Acheson, J., Gray vs. Taper Works, 16 F. R., 443.
(1884) Hussey Co. vs. Dering, 20 F. R., 795.
(1886) Jackson, Cir. J., U. S. vs. Am. Bell Tel. Co., 29 F. R., 35.
Cas. Cit., Wallace Cir. J., Merchants' Co. vs. G. T. R., 13 F. R., 360.

4. Nor need we consider a fourth class of cases, holding trading corporations of right suable where they carry on business, independent of any local statute.

Lowell, J., Hayden vs. Androscoggin Mills, 1 Fed. Rep., 93.

V.

The whole doctrine of presuming the members of a corporation to be citizens of the State creating the corporation, so that the corporate entity is also a citizen, rests upon the underlying doctrine of the *locality of the creation and business* of the corporation; that is, rests upon the indispensable idea of the *inhabitancy* of the corporation, "*where alone it has any legal existence*," as this Court said in *Paul vs. Virginia*, 8 Wall., 178.

Indeed (as stated above), the whole fiction that a corporation is a citizen of a State, was placed by this Court originally on the fact that the corporation is an *inhabitant* of that State, in *Louisville R. R. vs. Letson*, 2 How., 555. The Court says: "A corporation, created by a State, to perform its functions under the authority of that State, and only suable there, though it may have members out of the State, seems to us to be a person, though an artificial one, *inhabiting* and belonging to that State, and therefore entitled, for the purpose of suing and being sued, to be deemed a citizen of that State."

See also

Hammond, D. J., Uphoff vs. C. & St. L. R. R., 5 Fed. Rep., 548.

This essential conception, running through every decision of this Court, since the case of the *Bank of Augusta vs. Earle* (as shown above), excludes the idea, that having officers in other States, or directors' meetings in other States, or stockholders' meetings in other States, can change the *habitation*, or *dwelling place*, or "*legal home*" of the corporation.

Even where a railroad corporation of one State has received a license from another State to construct a railroad *there*, and to exert *there* some of its corporate powers, it does not become a citizen of the latter State.

Goodlett vs. Louisville R. R., 122 U. S., 391.

VI.

Let us now see how the Circuit Courts have construed the act of 1887, as to inhabitancy of corporations.

We submit that the very great weight of authority in these courts (including the decisions of some members of this bench at Circuit), is, that a corporation can be an inhabitant only of the State and district where it is created, under the law of 1887.

Even before the act of 1887, Circuit Judge Colt held, that the Circuit Court for Massachusetts had no jurisdiction, under the act of 1875, over a Maine corporation which had its principal business office in Massachusetts, where a majority of its officers and directors resided. Process was served on the corporate officers in Massachusetts, and also by an attachment of the corporate property. A plea to the jurisdiction was sustained. Circuit Judge Colt also said: "When the State, by local law, provides that foreign corporations doing business in the State shall be amenable to suit, such foreign corporations thereafter carrying on business in the State are liable to suit. But clearly, by the great weight of authority, this rule has not been extended so as to permit a corporation to be sued in a foreign State because it carries on business there, in the absence of a State law authorizing such suit."

We now proceed to the Circuit Court cases construing the act of 1887, and holding that in a case like the present there is no jurisdiction.

1. *County of Yuba vs. Mining Co.*, 32 F. R., 183.

A California plaintiff sued a Nevada corporation in California. Two propositions were declared by the Circuit Judge with the approbation of Mr. Justice Field. 1. That the Circuit Court could not take cognizance of the suit because the corporation defendant was not an inhabitant of the California district. 2. That the fact that the plaintiff was a resident of California made no difference. This last proposition was overruled by Mr. J. Field, in *Wilson vs. W. U. Tel. Co.*, 34 F. R., 563, after having been often disapproved. But the first proposition *stands*.

2. *Halstead vs. Manning, Bowman & Co.*, 34 F. R., 565. Wallace, Cir. J.

The defendant was a Connecticut corporation sued in New York, and alleged to be doing business in the Southern District of New York. The Court sustained a demurrer for want of jurisdiction, saying: "A defendant can no longer be sued outside the district *of which he is an inhabitant*, unless he consents or waives his right to object."

3. *Connor vs Vicksburg R. R.*, 36 F. R., 273. Thayer J.

The plaintiff was a citizen of Missouri, and the defendant a corporation of Mississippi. The bill alleged that it had *also* an office in Missouri, at St. Louis, and an agent there for the transaction of its business, on whom process was served. The corporation appeared specially and moved to set aside the service. The Court held that the corporation

was not an inhabitant of Missouri by reason of having an office and agent there.

The Court said it might as well be held that a corporation is a *citizen* of a State where it has an office and transacts business as that it is an *inhabitant* of such State. Also that the *manifest purpose* of the act of 1887 was to prevent such suits as that before the court.

4. *Gormully Co. vs. Pope Co.*, 34 F. R., 818.

Judge Blodgett said it was quite clear to him "that a "corporation can not be a citizen or inhabitant of more "than one place," construing the act of 1887. A corporation of Illinois brought suit in the Circuit Court for that State, against a corporation of Connecticut, *alleged to have a place of business in Illinois*, an averment like that in this case, now, before this Court, except that in Shaw's bill he has inserted the word "*usual*" before "place."

Judge Blodgett further says: "A corporation, like an "individual, may have agents representing it in a district of "which it is not an inhabitant; and *no reason is perceived* "*why it can be sued outside of the district where its* "*principal corporate business is done*, by service on its "agents, *which would not allow an individual to be so* "*sued*. And if a natural person, charged with the infringe- "ment of a patent, can only be sued in the district of which "he is an inhabitant, I can see no good reason why a corpor- "ation is not entitled to the same protection under the law."

5. *Filli vs. D., L. & W. R. R. Co.*, 37 F. R., 65. Lacombe, J.

Filli, an alien, sued a corporation of Pennsylvania in the Southern District of New York. The defendant moved to

set aside the service of process on the ground that it could be sued only in the Pennsylvania district, of which it was an inhabitant. The plaintiff, on the motion, read an affidavit, showing that the greater part of the defendant's railroad was located in the State of New York; and that its principal office is in the city of New York; and that there its directors are elected, its books and records kept, and its stock transferred; and that its principal officers have their offices there; and that eleven of its fourteen directors live there. The Court held that the weight of authority is that a corporation cannot be an *inhabitaut* of a State other than that of which it is a *citizen* and under the laws of which it is created.

6. *Fales vs. Railway*, 32 F. R., 673, Shiras J. (*Brewer, Circuit Justice, concurring.*)

Fales was a citizen of Iowa, and the C., M. & St. P. R. R. Co. a citizen of Wisconsin. Judge Shiras declares that citizenship and residence go together; and says further: "The fact that a corporation is engaged in business in a State other than that under whose laws it was created, does not change its legal citizenship or residence. In *Pennsylvania Co. vs. Railroad Co.*, 118 U. S., 290, 6 Sup. Ct. Rep., 644, and *Goodlett vs. Railroad*, 122 U. S., 391, 7 Sup. Ct. Rep., 779, it is held that a corporation, by owning property and business in another State, under the provisions of State legislation to that end, does not thereby become a citizen of the latter State, so as to lose the right of removal under the act of 1875. The real reason underlying these decisions is clearly stated in the case of *Muller vs. Dows*, 94 U. S., 444. It being then a conclusive presumption of the law, irrespective of the actual facts, that the stockhold-

ers of a corporation are citizens of the State under whose laws the corporation is created, and that the corporation itself, as a legal entity, cannot become a citizen of any State, it follows that the corporation, by engaging in business in other States, cannot acquire citizenship *or residence* therein; nor can the the acts of the corporation change the citizenship *or residence* of the stockholders."

7. *St. Louis Co. vs. Terre Haute Co.*, 33 F. R., 385. Gresham, Cir. J. (Allen, J., concurring.)

An Illinois corporation sued an Indiana corporation in the Illinois circuit. The Court held (p. 386, top), that the act of 1887 limits the jurisdiction of the Federal Courts over corporations to suits brought against them in the district of their domicile, unless the suit is brought where the plaintiff resides. It is assumed without argument that the *domicile* of the corporation is where it is created.

8. *National Typographic Co. vs. N. Y. Co.*, 44 F. R., 711. Lacombe, J.

Neither of the corporation parties was of New York, but the defendant corporations were sued there. The Court declared that the language of the Supreme Court of the United States in the cases we have cited above, *Ins. Co. vs. Francis*, 11 Wall., 210; *Ex parte vs. Schollenberg*, 96 U. S., 377; *R. R. Co. vs. Kroutz*, 104 U. S., 5; *Goodlet vs. R. R. Co.*, 122 U. S., 391; (among other) made the safe rule to decline jurisdiction in such cases.

9. *Booth vs. Manuf. Co.*, 40 F. R., 1. Brewer, Cir. J.

The plaintiff was not a citizen or resident of Missouri and the defendants were corporations organized in States other than Missouri. *All the corporations defendant had*

offices in Missouri, and transacted business in Missouri, and had some officers residing there, and in the case of one of the defendant corporations, all its officers were in Missouri, and all its business was transacted there. On motion to dismiss Circuit Judge Brewer said: "I simply state what conclusions I have come to in this matter, not from this argument alone, but in prior cases. In three cases the Supreme Court of the United States have spoken of the residence and citizenship of corporation." In the case of *Insurance Co. vs. Francis*, 11 Wall., 210, the Court says:

'The declaration avers that the plaintiff in error (the defendant in the Court below) is a corporation created by act of the Legislature of the State of New York, located at Aberdeen, Miss., and doing business there under the laws of the State. This, in legal effect, is an averment that the defendant was a citizen of New York, because a corporation *can have no legal existence* outside of the sovereignty by which it was created. *Its place of residence is there, and can be nowhere else. Unlike a natural person, it can not change its domicile at will*, and, although it may be permitted to transact business where its charter does not operate, *it cannot on that account acquire a residence there.*"

"In *ex parte Schollenberg*, 96 U. S., 377, the Court says:

'A corporation cannot change its residence or its citizenship. It can have its legal home only at the place where it is located by or under the authority of its charter.'

"And in the later case of *Railroad Co. vs. Koontz*, 104 U. S., 5, the Court uses this language:

'By doing business away from their legal residence, they

do not change their citizenship, but simply extend the field of their operations. *They reside at home* but do their business abroad.'

"Now, those declarations of the Supreme Court are not simply *affirmative* in character, asserting that a corporation is a citizen *and resident* of the State which creates it, but also *negative*, and declaring that it *cannot change its citizenship or residence.* In the light of those declarations, I hold that a corporation created under the laws of another State is a citizen and *resident* within that State. *It can acquire no residence here.* The motions will be sustained and suits dismissed."

10. *Myers vs. Murray Co.*, 43 F. R., 695. Shiras, J.

An Iowa complainant sued an Illinois corporation in Iowa and the case was removed, and then a motion to remand was made on the ground that the Illinois corporation was a resident of Iowa, and the motion was denied for the reason that a corporation, although carrying on business in several States, *can have a residence only in the State in which it was created.* On page 699 Judge Shiras uses the following cogent language:

"Further, if it be true that, within the meaning of the statutes regulating the jurisdiction, original, and by removal, of the United States Circuit Courts, a corporation may be a *resident of every State where it carries on business*, then it follows that, under the provisions of the act of 1888, the number of districts in which the corporations may institute suit is largely increased. Section 1 of that act provides that, in cases wherein federal jurisdiction exists by reason of the diversity of State citizenship, suit may be brought in the district of the residence of either plaintiff or defendant.

If railroad, insurance, manufacturing, commercial or other corporations are to be deemed to be residents of the States in which they carry on business, as well as of the States under whose laws they were created, then a single corporation may have the right to sue in the Federal Courts of every State in the Union. Again, if a corporation may become a *resident* of a State by engaging in business therein, *what character* or *amount* of *business* must it carry on before it acquires a residence in the State? Neither the statutes nor the authorities give us any guide or rule by which the fact of residence is to be thus established. The difficulties and uncertainties that would be created in the attempt to introduce this NEW RULE upon the question of residence can hardly be estimated, but that they would be of the most serious character is apparent to every one, and that fact should have great weight in determining whether Congress, in adopting the act of 1887 and the amendatory act of 1888, *intended to introduce a radical change in the previously well settled rule that corporations are deemed to be residents of the State under whose laws they are created, and cannot, by engaging in* business in other *States, change or affect such residence.*

"In the face of the repeated utterances of the Supreme Court upon the question, and the reasons given therefor, it does not seem to be that it can be held to be an OPEN QUESTION, and that safety lies in following the rule given us."

11. *Hohorst vs. Hamburg Packet Co.*, 38 F. R., 273. Lacombe, J.

A citizen of New York sued a foreign ocean carrier corporation in New York. The ships of the defendant came to docks in New Jersey, where its industrial operations in

this country were carried on. It has also a financial office in New York city. Process served on it there was set aside under the act of 1887.

12. *Denton vs. International Co.*, 36 F. R., 1. Ross, J.

An alien, a citizen of Mexico, resident in California, sued a Connecticut corporation in the California Circuit, where the defendant had an office and a managing agent. The Court quashed the summons, mainly on the authority of *R. R. Co. vs. Koontz*, 104 U. S., 12, which case declares that a corporation may be *said to be born* and *to reside* in the State where it is created.

13. *Benzinger Co. vs. National Co.*, 42 F. R., 81.

To the same effect.

14. *Preston vs. Fire Extinguishing Co.*, 36 F. R., 721. Blodgett, J., same effect.

There are doubtless several other cases like the above.

Opposed are only three cases, which contain no reasoning which is satisfactory, and cannot overrule the decisions of the Court (above) since 1839.

Zambrino vs. R. W. Co., 38 F. R., 449.
Riddle vs. R. Co., 39 F. R., 220.
Hirschl vs. Case Co., 42 F. R., 803.

VII.

The result of granting the petitioner's writ would be, that a corporation may be a citizen of several States at the same time, or that it may have a domicile in every State of the Union, and be an inhabitant of several States other than that where it is created, and at the same time.

The sole object of the act of 1887, we submit, was to prevent any such result.

We understand that in certain suits brought by the United States against sundry Kentucky and New York corporations in the California Circuit (and recently argued before Mr. Justice Brewer and Mr. Justice Harlan), the Attorney-General took the position that the government is not included in the act of 1887; which argument is a practical concession that, if included, those suits cannot be sustained.

More than this. The Attorney-General, in his report to Congress, December 1, 1891, p. xix, shows that he expects this Court will hold, as we submit it *must* hold, against the jurisdiction. He says:

"I recommend that section 1, of the act of August 13, 1888 (25 Stat., p. 434), be amended by inserting the proviso, in italics, after the word "inhabitant" in the following sentence, namely: "And no civil suit shall be brought before either of said Courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant:" *Provided, That any foreign corporation may be sued in any district where it may be found, process to be served as in like cases in the State where said suit or action is brought.*

Such an amendment would *restore the law to what it was* for a century, prior to the act of March 3, 1887, and would impose on the corporation a liability to be sued corresponding to the right they enjoy to sue as plaintiffs, and to remove suits in which they are defendants. "The two suits 2 and 3, viz., the one against the Northern Pacific Railroad Company and the Western Union Telegraph Company, and the one against the Sioux City and Pacific Company and the Western Union Telegraph Company, are both pending upon demurrer, awaiting the result in the cases against the Central and Southern Pacific Railroad Companies upon the question of jurisdiction."

Still more. Bill 493, now before the Judiciary Committee of the House, provides *that a corporation doing business in any other State than that in which it is incorporated, shall not bring a suit against a citizen of that State in the Federal Courts.*

This bill is the correlative of the law of 1887, and assumes that, as by the law of 1887, a foreign corporation cannot be sued in the Federal Courts, away from its domicile, it ought not to be allowed to bring suit in the Federal Courts, away from its domicile. (Except in patent and copyright cases.)

The result of granting the writ in this case would be to swamp the Circuit Courts and the Appellate Courts with business.

LASTLY.

The Quincy Mining Company ought not to be held a citizen of Michigan, because none of its members are citizens of Michigan, and as appears by the record, all of them are residents of Boston and New York, and none are residents of Michigan. (Record, p. 27, bottom, giving names and residences of incorporators.)

The members of this corporation ought not to be conclusively presumed to be citizens of Michigan when the record tends strongly to show that they are not so in fact.

By the act of 1875, it is made the duty of the Court to decline jurisdiction, if, from any source, the Court is *led to suspect* that the parties are not citizens.

Foster's Fed. Prac., pp. 436–438, cas. Coll.
XIV Am. Bar Assoc. Rep., pp. 217, 229.

We submit that the Quincy Mining Company of Michigan cannot be subjected to process in the New York Circuit, and that the writ must be denied.

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